



2025:DHC:874



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Pronounced on: 12th February, 2025***

+ **BAIL APPLN. 4614/2024**

KAN DAMIAN KOUASSI

..... Petitioner

S/o Kouassi,
R/o Akoupe S/D PAF Côte d'Ivoire,
Ivory Coast

Through: Mr. Akhilesh Kumar Meena & Ms.
Tanya Choudhary, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for
State.
S.I. Naveen & HC Lokender Kumar,
PS Anti-Narcotics Cell, Dwarka,
Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Bail Petition under Section 483 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (hereinafter referred to as 'BNSS') has been filed on behalf of the Petitioner seeking Regular Bail in FIR No. 0005/2023 under Sections 8/22 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (hereinafter referred to as "NDPS Act, 1985") registered at Police Station Mohan Garden, South West, Delhi.



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2. The *facts in brief* are that on 03.01.2023, on a secret information was received through *Mukhbir* by the Complainant in Anti-Narcotics Cell, Dwarka, the Petitioner was arrested from his house and 57 gms of Amphetamine Drug was recovered from the white coloured polythene tied in knot, which he was allegedly carrying in his hand. The recovery contraband was sealed in a *Pulanda* and seized. The FIR was registered accordingly.
3. It is asserted that during the investigations, the Disclosure Statement of the Petitioner was recorded on 04.01.2023, wherein he had allegedly disclosed that he used to procure the illegal contraband from one CJ R/o Chander Vihar, Delhi. Thereafter, the Police Custody Remand of the Petitioner was taken for three days.
4. On 05.01.2023, the recovered contraband was produced before the learned Metropolitan Magistrate for sampling which was done in the Court and the same was exhibited as Mark-BS1 and Mark-BS2 and had been sent to FSL, Rohini, Delhi for expert opinion. After obtaining the FSL Report on 29.05.2023, the Chargesheet has been filed in the Court on 06.06.2023.
5. Petitioner, native of Côte d'Ivoire has claimed that the material/contraband was never recovered from the possession of the Petitioner, but was planted by the Police; he has been falsely implicated in the present case.
6. The Petitioner had filed Regular Bail Application before the Special Judge, but the same was rejected *vide* Order dated 22.08.2024 on the ground that the material recovered from the Petitioner was a commercial quantity



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and the narrow parameters of Bail available under Section 37 of NDPS Act, 1985 have not been satisfied in the instant case.

7. The ***Bail has been sought on the ground*** that the Petitioner has been falsely implicated in the case. The Police are relying on 16 witnesses and recording of their evidence would take a long time, considering the number of cases pending before the learned Special Judge. From the Chargesheet, FIR, statement of witnesses and other documentary evidence placed on record, no *prima facie* case is made out against the Petitioner. No recovery of contraband or narcotic and psychotropic substance was made from the Petitioner, other than the alleged recovery of 57 gms. of Amphetamine Drug.

8. It is submitted that there is no material to prove that the Petitioner's constructive possession or conscious possession of any of the contraband articles. No recovery, in fact, has been made from the Petitioner. No material such as call detail record, chats, bank transactions etc., has also been placed on record.

9. The confessional statement of the Petitioner recorded in the Police Custody is no evidence. The Notice under Section 50 of NDPS Act, 1985 was not served by the Police Officer on the Petitioner and he was searched by the Police Officer on his purported acquiescence in lieu of the mandatory Notice under Section 50 of NDPS Act, 1985. Even though the raiding team had prior information about the Petitioner's place, no efforts were made to arrange the presence of a Gazetted Officer or a Magistrate for the search to be conducted in their presence. No proof of presence of Assistant Commissioner of Police (ACP) at the time of search of the Petitioner in



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compliance of Section 50 of NDPS Act, 1985 has been placed on record, through which it could be proved that ACP was present on the spot. There is neither any CDR nor any witness to prove the search of the Petitioner and recovery of the Amphetamine Drug.

10. Learned counsel for the Petitioner has placed reliance on the decision in Emeka Emmanuel vs. The State, decided *vide* BAIL APPLN. 1231/2022 on 18.11.2022 by the Co-ordinate Bench of this Court, to state that once the mandatory requirements of Section 50 of NDPS Act, 1985 were not satisfied, the recovery itself becomes doubtful.

11. It is submitted that the Petitioner is in Judicial Custody for the last two years and looking at the pendency of the cases and the conclusion of the trial in near future, is not likely to happen, as only the evidence of two witnesses has been recorded till date.

12. It is further submitted that the witnesses are Police Officials and there is no chance of the Petitioner influencing the witnesses. Moreover, the entire evidence, whether oral or documentary, is already in possession of the Investigation Agency and there are no chances of tampering with the same.

13. It is also submitted that the Petitioner has clean and clear antecedents and he has never been involved earlier in any criminal case. He is a respectable citizen of Côte d'Ivoire. Therefore, it is submitted that Bail may be granted.

14. ***The Status Report*** has been filed on behalf of the State, wherein it is submitted that the raiding team had requested various private persons to join the investigations, but they all expressed their difficulty to join on personal reasons. Due to paucity of time, no Notice could be given to passerby.



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People nearby left the spot citing fear for their life and property.

15. It is further submitted that the entry gate of the house of the Petitioner was found to be locked and an African person was visible to be present inside the house. Hence, after giving an introduction to the suspect, he was asked to open the gate, but he failed to do so. Therefore, the gate was broke open forcibly and the raid was conducted in the house of the Petitioner who was found in possession of the contraband.

16. It is submitted that due compliance of Section 50 of NDPS Act, 1985 was done and all the subsequent investigations had been carried out in accordance with law.

17. The Petitioner was arrested after due investigations and following the guidelines laid down by the Apex Court in various cases.

18. It is claimed that the proceedings under Section 52(2)(A) of NDPS Act, 1985 were conducted by the learned Metropolitan Magistrate and two samples were taken from the seized contraband. The FSL Report has been obtained and the Chargesheet has also been filed.

19. It is submitted that the prosecution evidence is being recorded and there are 16 prosecution witnesses in the Chargesheet, out of which testimony of two witnesses has already been recorded.

20. It is further submitted that the commercial quantity i.e., 57 gms. of Amphetamine Drug was recovered from the possession of the Petitioner and the twin requirements of Section 37 of NDPS Act, 1985 apply to the present case.

21. Therefore, the State has vehemently opposed the Bail Petition.

22. **Submissions heard and record perused.**



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23. The parameters for grant of bail to an accused under the NDPS Act, 1985 have been provided in various cases by the Supreme Court. The Supreme Court in Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549 has observed as under:

“6. As observed by this Court in Union of India v. Thamisharasi, (1995) 4 SCC 190, clause (b) of subsection (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are : (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence...”



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24. Further, in State of Kerala v. Rajesh, (2020) 12 SCC 122, the Supreme Court while discussing the expression ‘reasonable grounds’ has observed as below:

*“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. **The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.** In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”*

25. As per the case of the Prosecution, the Applicant was found in possession of 57 gms. of Amphetamine which is a commercial quantity, thereby mandating the satisfaction of the stringent *twin conditions* under Section 37 of the NDPS Act, 1985 which are necessarily required to be satisfied.

26. However, it is apposite to refer to the decision of the Apex Court in Union of India v. K.A. Najeer (2021) 3 SCC 713 wherein it was observed that courts are obligated to release the undertrial prisoners on bail if there is a delay in trial. Further, it was observed that *statutory restrictions do not exclude the discretion of Constitutional Courts to grant bail* on the grounds of violation of Fundamental Rights enshrined in Part III of the Constitution of India.

27. In the recent decision of Manish Sisodia v. Central Bureau of



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Investigation, 2023 SCC OnLine SC 139, the Apex Court reiterated that that right of liberty guaranteed under Article 21 of the Constitution of India is a sacrosanct right which needs to be accepted even in cases where stringent provisions are incorporated through special laws. It was held that prolonged incarceration before being pronounced guilty of an offence, should not be permitted to become punishment without trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the principle that “*bail is the rule and refusal is an exception*”.

28. In the present case, the Applicant has been incarcerated since 04.01.2023 i.e. for a period of over two years and only two out of 16 witnesses have been examined. The Applicant has clean antecedents, he has deep roots in the society and there is no likelihood of the Applicant fleeing from justice. Since, the witnesses are Police Officials there is no chance of the Petitioner tampering with the evidence. Further, the Chargesheet stands filed and no purpose would be served in keeping the Applicant under custody.

29. Considering the above-mentioned facts and in the light of the aforesaid discussion, the Petitioner is admitted to Regular Bail in FIR No. 0005/2023 under Sections 8/22 of NDPS Act, 1985 upon his furnishing a personal bond in the sum of Rs. 50,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions: -

- a) Petitioner shall not leave Delhi/NCR without prior permission of the Court;



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- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing;
 - c) Petitioner shall provide his mobile number and also the mobile number of his surety to the IO concerned, both of which shall be kept in working condition at all times;
 - d) Petitioner shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
 - e) Petitioner shall not try to contact, threaten or influence any of the witnesses of this case; and
 - f) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
30. The Registry is further directed to communicate this Order to the learned Trial Court and as well as to the FRRO, Delhi for information and necessary action.
31. Accordingly, the present Petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 12, 2025
S.Sharma